whether in all the circumstances of the case I would direct that the discharge shall amount to an acquittal.

The learned District Judge was informed that two principal prosecution witnesses were not available. On that basis the learned Deputy Public Prosecutor applied that the appellant be discharged not amounting to an acquittal. Obviously, the prosecution indicated that it was not going on, indeed was unable to go on, with the prosecution but there was no indication that it will never ever prefer the same charges against the appellant. It was equally obvious that in applying for a discharge not amounting to an acquittal, the prosecution was acting under sub-section 183(1) of the Code. In the course of the appeal, it was disclosed to me and it was not challenged by the learned Deputy Public Prosecutor, who had not appeared before the learned District Judge, that one of the two witnesses had died and that the other, a foreigner, was unavailable and likely to remain unavailable for an indefinite period. I was further told that the appellant had been reinstated in the Singapore Police Force after he had faced certain disciplinary proceedings and had emerged unscathed. Through his counsel, he asked that he be afforded the opportunity of a trial to clear his name and indicated that he was prepared to stand trial if the prosecution could indicate if it was able to proceed. The learned Deputy Prosecutor was unable to give the court any such indication. I was accordingly persuaded that it would be unfair to subject him to any further agony and I directed that the discharge should amount to an acquittal.

I now turn to the other appeal. K. Abdul Rasheed s/o Assainar was charged with the offence of having in May, 1982 with two named persons and in furtherance of their common intention committed theft of two sums of cash under section 380 read with section 34 of the Penal Code (Cap. 103). When the case came on for hearing on February 16, 1984 before the learned District Judge, the prosecuting officer applied for an order that the accused be given a discharge not amounting to an acquittal. Counsel for the accused objected and asked for an acquittal as the prosecution, he alleged, did not wish to proceed. It is not clear from the records of appeal if he was saying that the prosecution was forever not prosecuting the accused on the same charge. The case was stood down. At the resumption of the case in the afternoon, the learned District Judge understood the prosecution to say that it was not withdrawing the charge, although the records show that the prosecution had merely renewed its application for a discharge not amounting to an acquittal. Beyond that, the prosecution did not inform the court of the reason or reasons why it was not going on with the prosecution beyond that stage.

Looking at the grounds of decision of the learned District Judge, the sole ground was that the court should not deny the prosecution the right to proceed with its case subsequently and reliance was placed on *Kuppusamy* v. *Public Prosecutor*[5]. There was no consideration given at all to the question whether or not it was unfair to subject the accused to a charge hanging over his head for an indefinite period. As I read the grounds of decision of the learned District Judge, it was implicit that the practice of the court was to order a discharge not amounting to an acquittal if the prosecution indicated that it was not withdrawing the charge. If this was the practice, as I think it was, I have to say that it was clearly wrong. For the reasons I had given in the earlier appeal, a court has to act judicially and consider both the public interest and any unfairness to an accused person. A consideration of one aspect without the consideration of the other was not a proper exercise of the power of the court under sub-section 183(2) of the Code. I had therefore to consider all the circumstances, but my task was considerably lightened as the learned Deputy Prosecutor indicated to me that he was not resisting the appeal. I accordingly made the order I did.

Order accordingly.

Solicitors: *Amarjit Rubin & Partners.*

BUTTERWORTH & CO. (PUBLISHERS) LTD. & ORS. v. NG SUI NAM
LONGMAN GROUP LTD. & ANOR. v. NG SUI NAM
THE ROYAL ACADEMY OF MUSIC & ANOR. v. NG SUI NAM

[O.C.J. (Thean J.) February 25, 1985]

[Singapore – Suit Nos. 1924, 3913 & 3914 of 1981]

Copyright – Actions for infringement – Scope of Imperial Copyright Act 1911 – Whether copyright protection conferred on all works first published in U.K. or only on works first published in Singapore – Copyright Act (Cap. 187).

In this case, three actions were consolidated by an order of court made on September 6, 1982. The plaintiffs brought action against the same defendant for infringement of their copyright in those works.

The main question before the court was how is the Copyright Act 1911 (hereinafter called the 1911 Act) to be construed: Whether it is to be construed so as to confer copyright protection on the said works, all of which were first published in the United Kingdom, or only on works first published in Singapore.

Held, allowing the plaintiffs' claim: (1) the question for determination turns on the construction of the 1911 Act in the context of Singapore as a sovereign independent state;

(2) the 1911 Act and Paragraph 41 of the Seventh Schedule to the Copyright Act 1956 of United Kingdom were immediately before Singapore Day part of the law of Singapore and by virtue of section 13 of the Singapore Independence Act and article 162 of the Constitution continued in force thereafter and are still in force as part of the law of Singapore;

(3) in construing the 1911 Act and following the majority decision in *Public Prosecutor* v. *Anthony Wee Boon Chye & Anor.*[3] the expression "the parts of His Majesty's dominions" in section 1(1) of the 1911 Act is to be construed as a geographical expression, *i.e.* a geographical area covering all countries which fall within the British dominions to which the 1911 Act extends. In the instant case, the United Kingdom is within this geographical area and the said works being first published there enjoy copyright protection.

Editorial Note : The defendant has filed a Notice of Appeal against the above decision on March 26, 1985 in Civil Appeal No. 13 of 1985.

Cases referred to:

(1) *Performing Right Society* v. *Bray Urban District Council* [1930] A.C. 377.
(2) *Blackwood & Sons Ltd.* v. *A.N. Parasuraman* A.I.R. 1959 Mad. 40.
(3) *Public Prosecutor* v. *Anthony Wee Boon Chye & Anor.* [1965] 1 M.L.J. 189.
(4) *State of Madras* v. *Menon* A.I.R. 1954 S.C. 517.
(5) *Shaik Sahied bin Abdullah Bajerai* v. *S.S.T. Sockalingam Chettiar* [1933] 2 M.L.J. 81.

CIVIL SUITS.

Gavin Lightman Q.C. (*Anthony Lee* with him) for the plaintiffs.

Anthony Walton Q.C. (*Chia Quee Khee* and *Kan Ting Chu* with him) for the defendant.

Cur. Adv. Vult.

Thean J.: The Plaintiffs in Suits 1924 and 3913 of 1981 are publishers in the United Kingdom and are owners of copyrights in numerous works published in the United Kingdom. They brought these two actions against the Defendant, who is the proprietor of several book stores in Singapore, for infringement of their copyrights. The Plaintiffs in Suit 3914 of 1981 are two corporations, incorporated by Royal Charter in the United Kingdom and are owners of the copyrights in certain works. They brought this action also against the same Defendant for infringement of their copyrights in these works. These three actions were consolidated by an order of Court made on September 6, 1982 and since then multiple interlocutory applications had been taken out by the Plaintiffs, particularly on discoveries and interrogatories. Until recently these proceedings had every sign of developing into a mammoth action. Fortunately, just before the trial the parties have agreed on a set of facts and on the basis of these facts are seeking the determination of this Court on only one question of law.

The facts as agreed by the parties are very brief and are these. Citizens of the United Kingdom who are the authors of original literary works first published in the United Kingdom ("said works") and in particular in the United Kingdom during the periods:–

(a) before June 1, 1957 (the coming into force in the United Kingdom of the Copyright Act, 1956),

(b) June 1, 1957 to January 26, 1959 (the date of the coming into effect of the Copyright Act 1956 (Transitional Extension) Order, 1959),

(c) January 26, 1959 to June 3, 1959 (the date of the coming into force of the provisions of the Singapore (Constitution) Order in Council 1958 (S.I. No. 1956 of 1958) other than sections 121(5) and 123 which came into force on November 28, 1958,

(d) June 3, 1959 to September 16, 1963,

(e) September 16, 1963 to August 9, 1965, and

(f) August 9, 1965 to the present,

have assigned to the Plaintiffs all their copyrights in the said works throughout the world. The Defendant has since 1965 imported for sale in Singapore and by way of trade offered to sell and sold copies of the said works which were neither made nor published with the licence or consent of the Plaintiffs or any of them. The issue which has arisen between the Plaintiffs and the Defendant and which is now to be determined is whether such works are entitled to copyright protection within the Republic of Singapore.

Copyright is a creation of statute, and the

relevant statute on which the Plaintiffs base their claim is the Copyright Act, 1911 of the United Kingdom ("1911 Act"). It is the contention of Mr. Lightman on behalf of the Plaintiffs that the 1911 Act since its extension to Singapore in 1912 has continued in force as part of the law of Singapore, and accordingly, the said works are entitled to copyright protection thereunder. Mr. Walton on behalf of the Defendants concedes that the Act is part of the law of Singapore but having regard to the change in the status of Singapore from a British colony to a constituent state of the federation of Malaysia in 1963 and subsequently to a sovereign independent state in 1965, that Act should be so construed as to confer copyright protection, in respect of published works, on such works only if such works were first published in Singapore. The issue therefore is not whether the 1911 Act applies as part of the law of Singapore; as will be seen later from a historical review of the copyright legislation, it undoubtedly forms part of the law of Singapore. The issue really is how is the 1911 Act to be construed: whether it is to be construed so as to confer copyright protection on the said works, all of which were first published in the United Kingdom, or only on works first published in Singapore. The question for determination turns on the construction of the 1911 Act in the context of Singapore as a sovereign independent state.

The 1911 Act was enacted by the Parliament of the United Kingdom on December 16, 1911 and by section 1(1) thereof provides:

"1. (1) Subject to the provisions of this Act, copyright shall subsist throughout the parts of His Majesty's dominions to which this Act extends for the term hereinafter mentioned in every original literary dramatic musical and artistic work, if –

(a) in the case of a published work, the work was first published within such parts of His Majesty's dominions as aforesaid; and

(b) in the case of an unpublished work, the author was at the date of the making of the work a British subject or resident within such parts of His Majesty's dominions as aforesaid;

but in no other works, except so far as the protection conferred by this Act is extended by Order in Council thereunder relating to self-governing dominions to which this Act does not extend and to foreign countries."

By section 25(1) the Act extended throughout the British dominions except self-governing dominions and the said section 25(1) is in the following terms:

"25. (1) This Act, except such of the provisions thereof as are expressly restricted to the United Kingdom, shall extend throughout His Majesty's dominions: Provided that it shall not extend to a self-governing dominion, unless declared by the Legislature of that dominion to be in force therein either without any modifications or additions, or with such modifications and additions relating exclusively to procedure and remedies, or necessary to adapt this Act to the circumstances of the dominion, as may be enacted by such Legislature.

The term "self-governing dominions" has been expressly defined in section 35(1) to mean "the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, and Newfoundland". Under Section 37(2) the Act came into force in the United Kingdom on July 1, 1912 and, as regards a British possession other than self-governing dominion or the Channel Islands, on the proclamation thereof made by the Governor within the possession. Under the Interpretation Act, 1889 of the United Kingdom, which was then in force, the term "British possession" means "any part of Her Majesty's dominions, exclusive of the United Kingdom". Singapore at that time was part of the Straits Settlements, a British possession and the Governor of the Straits Settlements on July 1, 1912 made a proclamation pursuant to section 37(2)(d) of the 1911 Act and accordingly the Act came into force in Singapore on that day.

Hence, as of July 1, 1912 all published works and unpublished works falling within section 1(1) of the 1911 Act were conferred copyright protection. (In this case, we are concerned with published works, and hence only copyright in such works is referred to and discussed in this judgment). That position continued until June 1, 1957. On that day the Copyright Act 1956 of United Kingdom ("1956 Act") came into force in the United Kingdom and by the Ninth Schedule thereto repealed the whole of the 1911 Act, except sections 15, 34 and 37. At that time no part of the 1956 Act extended to Singapore, though under section 31 thereof any of the provisions of the Act may be extended to, *inter alia*, any British colony. In consequence a very astonishing situation arose. The 1911 Act was repealed in the United Kingdom (except sections 15, 34 and 37), and as of that date, as no part of the 1956 Act extended to Singapore, the 1911 Act being then a part of the law of Singapore remained unaffected by any provision of the 1956 Act. Therefore, in construing the 1911 Act on June 1, 1957 in Singapore one was driven inescapably to the conclusion that the United Kingdom was no longer an area to which the 1911 Act extended and consequently

as from that date all works first published in the United Kingdom were no longer afforded any copyright protection. There was undoubtedly a lapse on the part of the legislature which curiously was allowed to persist until June 26, 1959, when an Order in Council of the United Kingdom, called the Copyright Act, 1956 (Transitional Extension) Order, 1959 (S.I. 103 of 1959) ("Extension Order 1959") was made. That Order made pursuant to section 31 of the 1956 Act modified paragraph 41 of the Seventh Schedule to the Act and that paragraph so modified was extended to, *inter alia,* all the British colonies. Paragraph 41 of the Seventh Schedule so modified ("Paragraph 41") is in the following terms:

"In so far as the Act of 1911 or any Order in Council made thereunder forms part of the law of any country other than the United Kingdom, at a time after that Act has been wholly or partly repealed in the law of the United Kingdom or of any other country to which the Act extended or which, by virtue of that Act, was to be treated as a country to which it extended, it shall, so long as it forms part of the law of the country first mentioned, be construed and have effect as if that Act had not been so repealed."

It is Mr. Walton's submission that between June 1, 1957 and January 26, 1959 there was a period of time – which he aptly called an interregnum – during which even whilst Singapore was a British possession, in the eyes of the law of Singapore, the 1911 Act did not extend to the United Kingdom and any work first published there during this period did not enjoy any copyright protection in Singapore under the 1911 Act. I find myself in entire agreement with him on this point. Mr. Lightman submitted, however, that the moment the Extension Order 1959 was made it had retrospective effect by virtue of paragraph 39 of the Seventh Schedule to the 1956 Act. The short answer to this is that that paragraph had never been extended to Singapore and therefore cannot be called in aid in interpreting Paragraph 41. In my judgment Paragraph 41 has no retrospective effect. The Extension Order 1959 with effect only from June 26, 1959 restored in Singapore the *status quo* on copyright protection as existed immediately prior to June 1, 1957.

On August 31, 1958 the United Kingdom Parliament passed the State of Singapore Act, 1958 and pursuant to that Act the Singapore (Constitution) Order in Council 1958 (S.I. No. 1956 of 1958) was made which came into force on June 3, 1959 (except for sections 121(5) and 123 thereof which came into force earlier, on November 28, 1958). By that Act Singapore was called the State of Singapore and the Constitution Order gave to the newly named State of Singapore internal self-government, reserving to the United Kingdom the responsibility of defence and external affairs. This Act and the Constitution Order did not have any effect on the copyright protection conferred by the 1911 Act (read with Paragraph 41), and the State of Singapore though having an internal self-government was still a British colony.

The next important epoch-making date was of course September 16, 1963 ("Malaysia Day"). That was the date when the State of Singapore ceased to be a British colony and became a constituent state of an independent sovereign federation, the federation of Malaysia. This was brought about by the combined effect of the United Kingdom Malaysia Act 1963 and Malaysia Act, 1963 of the then Federation of Malaya. By section 1(1) of the Malaysia Act of the United Kingdom, to enable North Borneo, Sarawak and Singapore ("New States") to federate with the existing States of Federation of Malaya on the appointed day (which was September 16, 1963) British sovereignty and jurisdiction in respect of the New States were relinquished so as to vest in the manner agreed between the United Kingdom, Federation of Malaya and the New States. The United Kingdom Malaysia Act, 1963 was passed on July 31, 1963 and soon thereafter an Order in Council of the United Kingdom, called The Sabah, Sarawak and Singapore (States Constitutions) Order in Council (S.I. No. 1493 of 1963) was made on August 29, 1963 establishing for, *inter alia,* the then State of Singapore a constitution. The relevant provision of the Constitution for the purpose of this case is Article 105(1)*, which is as follows:–

"105. (1) Subject to the provisions of this Article and to any provision made on or after Malaysia Day by or under Federal law or State law, all existing laws shall continue in force on and after the coming into operation of this Constitution and all laws which have not been brought into force by the coming into operation of this Constitution may, subject as aforesaid, be brought into force on or after its coming into operation, but all such laws shall, subject to the provisions of this Article, be construed as from the coming into operation of this Constitution with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Constitution and the Malaysia Act, 1963."

The Malaysia Act 1963 of the Federation of Malaya came into force on September 16, 1963

* Cf. art. 162 in The Constitution of the Republic of Singapore (Reprint 1980).

and by section 4 thereof a Federation by the name of Malaysia was constituted and the States of Federation of Malaya, Sabah, Sarawak and Singapore became the States of Malaysia. Both the Malaysia Acts contained necessary provisions preserving existing laws. Section 3(1) of the United Kingdom Malaysia Act provides:

"3.(1) On and after the appointed day all laws which, whether being a rule of law or a provision of an Act of Parliament or of any other enactment or instrument whatsoever, is in force on that day or has been passed or made before that day and comes into force thereafter, shall, unless and until provision to the contrary is made by Parliament or some other authority having power in that behalf, and save as otherwise provided by this Act, have the same operation in relation to the Federation, to any of the States of the Federation, and to persons and things belonging to Federation or any of the States thereof, as it would have apart from this subsection if the new States had not become included in the Federation and section 1 of this Act had not been passed."

And section 73(1) of the Malayan Malaysia Act provides:

"73. (1) Subject to the following provisions of this Part of this Act and to any law passed or made on or after Malaysia Day, all present laws shall, on and after Malaysia Day, have effect according to their tenor, and be construed as if this Act had not been passed:

Provided that references to the Federation (except in relation to a time before Malaysia Day) shall unless the context otherwise requires or it is otherwise expressly provided by any written law including any order made under Section 74 be construed as references to Malaysia, and expressions importing such a reference shall be construed accordingly".

With the entry of Singapore into Malaysia, the fate of the 1911 Act reached a critical stage. It was a piece of imperial legislation, extended to all British possessions, and Singapore had ceased to be a British possession. The inevitable question then was whether at that point of time the 1911 Act still applied and remained in force as part of the law of Singapore so as to confer copyright protection on works first published in the United Kingdom. That question was not new even at that time. It arose as long ago as 1928 in the Republic of Ireland in the case of *Performing Right Society* v. *Bray Urban District Council*[1] where the plaintiffs as an assignee of copyright to two musical works sued a local authority for infringement of copyright in those works. The question was whether immediately after Ireland became independent the 1911 Act (which originally extended to Ireland) was still in force in Ireland. (The 1911 Act was subsequently repealed by the Industrial and Commercial Property (Protection) Act, 1927 of Ireland). Article 73 of the Irish Constitution provides:

"Subject to this Constitution and to the extent to which they are not inconsistent therewith, the laws in force in the Irish Free State (Saorstat Eireann) at the date of the coming into operation of this Constitution shall continue to be of full force and effect until the same or any of them shall have been repealed or amended by enactment of the Oireachtas."

The Privy Council held that there was nothing in the 1911 Act which was inconsistent with the Irish Constitution and accordingly the 1911 Act was then in force. Lord Sankey delivering the judgment of the Judicial Committee said, at p.399:

"Their Lordships think that it is not a question of what laws "came over" at the critical moment, but that the right view to take is that by virtue of art. 73 all such laws as were in force immediately before December 6, 1922, continued and remained in force except so far as they were inconsistent with the constitution, and they cannot hold that the Copyright Act, 1911, and its provisions were in any way inconsistent with the constitution."

About 30 years later the same question arose in India – in the State of Madras – in the case of *Blackwood & Sons Ltd.* v. *A.N. Parasuraman*[2] and the decision of the Privy Council in *Performing Right Society* v. *Bray Urban District Council (supra)* was followed. In that case, certain publishers in the United Kingdom sued a firm of publishers in the State of Madras for infringement of copyright in certain works and one of the questions for determination was whether the 1911 Act, which extended to India at the time when India was a British possession, continued in force as part of the law of India, after India had obtained independence in 1947 and also after it had become a Republic. The 1911 Act came into force in India on October 30, 1912 when the Governor of India at the time made a proclamation pursuant to section 37(2)(d) of the 1911 Act. The Indian Independence Act, 1947, passed by the Parliament of the United Kingdom set up India as an independent self-governing dominion, and it contained necessary provision preserving the existing law. Section 18(3) thereof provides:

"Save as otherwise expressly provided in this Act, the law of British India and of the several parts thereof existing immediately before the appointed day shall, so far as applicable and with the necessary adaptations, continue as the law of each of the new Dominions and the several parts thereof until other Legislature of the Dominion in question or by any other Legislature or other authority having power in that behalf."

Subsequently, India became a republic and

enacted its own constitution which came into force on January 26, 1950. Article 372(1) thereof provided for the continuance in force of all existing laws and it is in the following terms:

"(1) Notwithstanding the repeal by this Constitution of the enactments referred to in Art. 395 but subject to the other provisions of this Constitution, all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority."

And by Article 366(10) "existing law" means "any law, ordinance, order, by-law, rule or regulation passed or made before the commencement of this Constitution by any legislature, authority or person having power to make such law, ordinance, order, by-law, rule or regulation". Ayyangar J. of the Madras High Court held that the 1911 Act was a law in force in India immediately before the commencement of the Constitution and it continued in force as part of the law of India by virtue of Article 372(1) of the Constitution.

It should be noted that in each of the two cases just cited the question was whether or not the 1911 Act remained in force after the independence of each of the countries concerned, and it was held that it remained in force by reason of the provisions preserving existing laws. The question whether the 1911 Act which applied should then be construed with necessary modifications was never considered by any of the courts. Both the Irish Constitution and the Indian Constitution contained provisions for continuance of the operation of existing law in force until repealed or amended. It is significant that the Irish Free State Act 1922 contained a provision in section 73 substantially identical in language with Article 372 of the Indian Constitution which continued the operation of the law then in force until repealed or amended. Section 18(3) of the Indian Independence Act, 1947, however, did provide for adaptation of existing laws. Relying on this provision counsel for one of the defendants in *Blackwood & Sons Ltd.* v. *A.N. Parasuraman (supra)* advanced the argument that as a necessary adaptation the 1911 Act should cease to apply as the continuance of the applicability of that Act was repugnant to the concept of independence of India, to which argument a shortshrift was given by Ayyangar J. He said, at p. 417:

"Whatever be the width of the power of adaptation conferred by section 18(3) of the Indian Independence Act, I cannot agree that it extends to enable a repeal to be effected to an existing law particularly one governing rights in property, recognised all the world over. India was and continues to be a member of the Copyright Union and in that sense that conception of copyright is not repugnant to her ideas. If so, I do not see any principle underlying the suggestion that the Court should so adapt the Copyright Act, 1914 as to eliminate the provisions in the enactment scheduled to it merely because the scheduled enactment operates by virtue of legislation of the United Kingdom. On the other hand it would be in consonance with sound principles to hold the Copyright Act, 1911 continues with the modifications effected by Act III, 1914, until the Indian legislature chooses to legislate on the subject."

I now return to the question which I posed, namely: the status of the 1911 Act at the time of Singapore's entry into Malaysia. On this point the most crucial piece of legislation is undoubtedly Article 105 of the Singapore Constitution brought in by the Order in Council (S.I. No. 1495 of 1963). On August 28, 1963 when this Order in Council came into force the 1911 Act and Paragraph 41 were part of the then existing law of Singapore and by virtue of Article 105 continued in force on and after Constitution came into effect. Following closely the provision of Article 105 the next question is one of construction of the 1911 Act read with Paragraph 41 and in particular the extent of modification, adaptation, qualification and exception, if any, with which this legislation ought to be construed. This point in principle had been determined in 1964 by the majority decision of the Federal Court of Malaysia in *Public Prosecutor* v. *Anthony Wee Boon Chye & Anor.*[3] In that case a warrant was issued by a magistrate in Hong Kong for the arrest of Anthony Wee Boon Chye and Agnes Wee ("accused") on a charge of committing an offence under section 9(a) of the Forgery Ordinance of Hong Kong. The accused were in Singapore at that time and the police in Hong Kong forwarded the warrant to the police in Singapore who then arrested the accused and brought them before a district judge with a view to the warrant being endorsed and order made for the repatriation of the accused to Hong Kong under Part II of the Fugitive Offenders Act, 1881 of the United Kingdom ("1881 Act"). The learned district judge refused to endorse the warrant on the ground that the provisions of Part II of the 1881 Act were no longer in force in Singapore as Singapore had become part of the sovereign Federation of Malaysia. In so doing the learned district judge was following the decision of the Supreme Court of India in the case of *State of Madras* v. *Menon*[4]. Against the decision of the learned district judge the Public Prosecutor appealed to the High Court and upon the appeal coming on for hearing the High Court considered that a constitutional ques-

tion was involved and stated a special case for the opinion of the Federal Court under section 48 of the Judicature Act then in force. The Federal Court held that the provisions of Part II of the 1881 Act as applied to British possession by the Order in Council made on January 2, 1918 ("Singapore-Hong Kong Order") were still part of the law of Singapore notwithstanding the incorporation of Singapore in the Federation of Malaysia. In arriving at this conclusion Thomson L.P. held that as at September 15, 1963, the last day on which Singapore was part of the British possession and the day before it became part of the Federation of Malaysia, the provisions of Part II of the 1881 Act and the Singapore-Hong Kong Order were part of the law of Singapore and by virtue of Article 105 they continued in force and their existence was further perpetuated by section 73 of the Malaysia Act of Federation of Malaya, and that as a matter of construction the term "British possession" was to be construed as a geographical expression. He said, at p. 193:

"On article 105 of the Singapore Constitution and section 73 of the Malaysia Act it would then seem clearly to follow as a matter of pure construction that the Singapore-Hong Kong Orders-in-Council and sections 13 to 19 of the 1881 Act as read together are part of the 'present law' of the State of Singapore and as such are still in force.

It has, however, been argued that the question goes beyond one of pure construction and that there is such an inconsistency between the terms of that law and the Constitution, which by article 4(1) is declared to be "the supreme law of the Federation" and which is the Constitution of a sovereign independent State, as completely to destroy its validity, or at least as to completely to deprive any available interpretation of its terms of effective meaning so as to render it for all practical purposes a nullity.

There would seem to be little substance in this argument.

Nothing now turns on the expression 'British Possession'. On and from Malaysia Day the power of Her Britannic Majesty to make laws having effect in Singapore has been relinquished by reason of section 1 of the United Kingdom Malaysia Act, 1963. There is no longer, therefore, any power in Her Majesty to vary the Singapore-Hong Kong Order. And therefore so long as that Order stands and is neither amended nor revoked by Parliament it is 'frozen' so to speak and in particular the expression 'British Possession' where it occurs in sections 13 to 19 is, as it were, drained of any content implying any political relationship between the United Kingdom and Singapore; so far as concerns Singapore it is not a political but a geographical expression. The "law", that is the Singapore-Hong Kong Order and sections 13 to 19 read together, is simply one which enables persons in Singapore in certain circumstances to be sent out of Singapore to Hong Kong for trial for offences alleged to have been committed in Hong Kong.

Thus considered there is nothing in that law which conflicts either with the Constitution nor the sovereign status of Malaysia.

Once it is accepted that as a matter of construction the law is in terms a law which was continued in existence after Malaysia Day and that there is nothing to prevent its terms being interpreted in a way consistent with the Constitution there only remains the question of whether its substance is in any way repugnant to any of the provisions of the Federal Constitution. That is a question which can be best answered by applying the test of whether in the event of Parliament enacting a similar law tomorrow it would for any reason be void.

Applying that test, it is clear that there is nothing in the Constitution that would justify any answer but 'no' to the question posed by it."

Barakbah, C.J. (Malaya) concurred with what Thomson, L.P. said. Wylie C.J. (Borneo) for different reasons also came to the same conclusion that Part II of the 1881 Act still applied to Singapore.

Though the decision in that case relates to a construction of a different statute, namely the 1881 Act, I find that I am bound to follow the principles adopted by the majority of the Federal Court in construing the 1881 Act. In a similar way the 1911 Act read with Paragraph 41 is to be construed "drained of any content implying any political relationship between the United Kingdom and Singapore" and so far as concerned "the parts of His Majesty's dominions" to which the 1911 Act extends it is to be treated as a geographical epxression: the geographical areas which fall within "the parts of His Majesty's dominions" to which the 1911 Act extends. In other words, the term "the parts of His Majesty's dominions" to which the 1911 Act extends is to be construed as an area embracing all countries geographically falling within those parts of the British dominions. Such a construction is not inconsistent or in conflict with the Constitution of Malaysia or the sovereign status of Malaysia. Nor following the test propounded by Thomson L.P. is it repugnant to any provisions of the Constitution. Therefore, as at September 16, 1963, the 1911 Act continued in force as part of the law of Singapore and in so far as the instant case is concerned, works first published in the United Kingdom continued to enjoy copyright protection under the 1911 Act.

The position as it then existed continued unaffected upon Singapore's separation from Malaysia. The Republic of Singapore Independence Act 1965 enacted on December 23, 1965 took effect

retrospectively from August 9, 1965 ("Singapore Day") and by section 13(1) preserved the existing law. Section 13(1) is in the following terms:

"13. (1) Subject to the provisions of this section, all existing laws shall continue in force on and after Singapore Day, but all such laws shall be construed as from Singapore Day with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Act and with the independent status of Singapore upon separation from Malaysia."

The term "existing law" is defined in section 13(7) to mean any law including written law having effect as part of the law of Singapore prior to Singapore Day. The Act of 1965 by section 6 continued in force the Constitution of Malaysia with amendments as the Constitution of Singapore, and since then fruther amendments to Singapore Constitution have been made by Parliament from time to time. In respect of existing laws, Article 162 thereof provides:

"162. Subject to this Article, all existing laws shall continue in force on and after the commencement of this Constitution and all laws which have not been brought into force by the date of the commencement of this Constitution may, subject as aforesaid, be brought into force on or after its commencement, but all such laws, subject to this Article, be construed as from the commencement of this Constitution with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Constitution."

The 1911 Act and Paragraph 41 were immediately before Singapore Day part of the law of Singapore and by virtue of section 13(1) of the Singapore Independence Act and Article 162 of the Constitution continued in force thereafter and are still in force as part of the law of Singapore. Also as part of the law of Singapore and in accordance with these provisions the 1911 Act in its application to Singapore is to be construed with "modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Constitution". In so construing the Act and following the majority decision in *Public Prosecutor* v. *Anthony Wee Boon Chye & Anor. (supra)* the expression "the parts of His Majesty's dominions" in section 1(1) of the 1911 Act is to be construed as a geographical expression, *i.e.* a geographical area covering all countries which fall within the British dominions to which the 1911 Act extends. In construing the Act there are of course various other provisions thereof which will have to be modified, adapted, qualified or excepted in their application to Singapore; most likely some of the provisions thereof are wholly inapplicable and some would have been spent, as demonstrated by Mr. Walton. But a review of the 1911 Act is outside my purview and I shall not gratuitously carry out such an exercise. Suffice here to say that in the instant case the United Kingdom is within this geographical area and the said works being first published there enjoy copyright protection.

I am fully conscious that such a construction of the 1911 Act leads to a somewhat bizarre result. As can be seen from sections 1(1) and 25(1), the 1911 Act extended throughout the British dominions (other than the self-governing dominions specifically mentioned in section 37(2) unless declared by the legislatures of such dominions to be in force therein) and if the words "the parts of His Majesty's dominions" are to be construed as a geographical area, as they are being so construed, it includes numerous countries which were part of the British dominions but which have since become independent. Such countries include India, Pakistan, Bangladesh, Sri Lanka and even Burma and numerous countries in Africa. The logical consequence is that not only works first published in the United Kingdom but also works first published in these countries would enjoy copyright protection. Such a consequence naturally gives rise to concern. However, I do not feel particularly perturbed for two reasons. First, most of these countries, to which the 1911 Act had initially extended, would have in all probability repealed the Act and have their own copyright legislation, and if this is the position, then works emanating from such countries would no longer enjoy any copyright protection. Secondly, assuming my surmise of such repeal of the Act is wrong, Parliament has recognised the 1911 Act as part of the law of Singapore and must have been cognizant of the extent of its application to Singapore. The decision in *Public Prosecutor* v. *Anthony Wee Boon Chye and Anor. (supra)* was delivered in 1964 and the legislature must have been aware of the wide implication arising from the construction given by the Court to the 1881 Act – an Act of the United Kingdom. Yet, since then no step has been taken to amend or repeal the 1911 Act. Our Copyright Act (Cap. 187), which was formerly the Copyright Ordinance enacted in 1914 and amended the 1911 Act in its application to Singapore, is still in force. Further in 1969 Parliament passed the Copyright (Gramophone, Records and Government Broadcasting) Act (Cap. 188) which provides penalties for the infringement of copyright in gramophone records and exempts Government broadcasting from infringement of copy-

right in musical works and gramophone records. Parliament has thus overtly accepted the subsistence of copyright under the 1911 Act and must be taken to have known of the extent of copyright in works conferred by that Act. On this aspect of the matter I do not think I can do better than quote the following passage from the judgment of Thomson L.P. in the *Anthony Wee's* case, at page 194:

"In the present case many of the arguments which have been addressed to Themis are more appropriate for the consideration of Demos and must accordingly be disregarded here. And in that connection it may be added (though such a consideration is, of course, irrelevant) that it has at all times been open to Parliament to amend this, or indeed any other, law that has survived from the days before independence but that in the case of this particular law Parliament has evinced no sign of disapproval."

Before I conclude I would like to dispose of very briefly the alternative argument of Mr. Lightman which is this. Under Section 5 of the Civil Law Act (Cap. 30) in all questions or issues which arise or which have to be decided in Singapore with respect to, *inter alia,* mercantile law generally the law to be administered shall be the same as would be administered in England in like case, at corresponding period, if such question or issue had arisen or had to be decided in England, unless in any case other provision is or shall be made by any law having force in Singapore. In his submission, in the context of that Act and in particular in the context of sub-sections (1) and (2) of section 5 the law of copyright is part of mercantile law for this purpose and therefore the law to be administered is the law of England on the basis of the law of copyright as presently administered in England. I do not agree. Copyright is a creation of statute, and whether or not a work is entitled to copyright protection depends on whether there is any statute which confers copyright in such work. It is not a matter of "mercantile" law or anything of that kind. In the case of *Shaik Sahied bin Abdullah Bajerai* v. *S.S.T. Sockalingam Chettiar*[5] it was argued before the Privy Council that the English Moneylenders Acts 1900-1927 were part of the law to be administered in that case by virtue of section 5(17) of the Civil Law Ordinance No. 111 of 1920 of the Straits Settlements which is substantially identical to section 5(1) of the Civil Law Act. Lord Atkin delivering the judgment of the Judicial Committee rejected this argument and dealt with the said section 5(17), at page 28, as follows:

"It is to be noted that the section does not purport to apply in every mercantile transaction. It applies only where a question or issue has to be determined with respect to mercantile law. The general object no doubt is to secure uniformity of mercantile law in Singapore and the United Kingdom, though of course, whatever the object, full effect must be given to the plain meaning of the words used. It is obvious that there are mercantile transactions in which no question with respect to mercantile law arises; just as there are non-mercantile transactions in which such a question does arise".

There is no question or issue with respect to mercantile law arising here.

The actions by the Plaintiffs succeed and I make an order in terms as agreed upon by the parties.

Order accordingly.

Solicitors: *Allen & Gledhill; Wee Swee Teow & Co.*